IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2298 OF 2006
WITH
CRIMINAL WRIT PETITION NO.2321 OF 2006

Shri.Amit Ashok Thepade
and 2 Ors. ...Petitioners.
Versus
M/s. Shah Nagindas Manchharam
and sons, and Anr. ...Respondents.

Mr.H.M.Kulkarni, Advocate for the Petitioners.
Mr.K.Y.Mandlik, Advocte for Respondent No.1.
Mrs.M.M.Deshmukh, APP, for State.

CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 20th February, 2007.

P.C.:

1. Heard Mr.Kulkarni, the learned Advocate for the petitioners-orig.accused, Mr.Mandlik, the learned Advocate for respondent No.1-orig.complainant and Mrs.Deshmukh, the learned APP for the State.

2. Process has been issued against the petitioners under Section 138 r/w. 141 of N.I. Act. Being aggrieved thereby the petitioners had preferred a revision before the Sessions Court, which came to be dismissed. Being aggrieved

thereby, these Writ Petitions have been preferred.

3. It is the contention of petitioner Nos.2 & 3 that they have resigned as Directors from the Company prior to the cheque being issued and hence they cannot be held liable. In support of the contention that petitioner Nos.2 & 3 had resigned prior to the cheque being issued reliance is placed on Form-32M.

4. Mr.Kulkarni has placed reliance on two decisions of this Court, wherein it is observed that if form No.32 shows that the accused therein had resigned prior to the cheque being issued the complaints were to be quashed. Both these decisions are rendered by the Single Judge of this Court. They are in the case of **D.B.Mehta & Ors. Vs. Ramesh Rikhavdas Shah & Anr., 2004(3) Mh.L.J. page-3; and Chaitan M. Maniar Vs. State of Maharashtra & Anr, 2004(2) Mh.L.J page-1035**.

5. However, I am inclined to rely on the decision of the Supreme Court in the case of **S.V.Muzumdar & Ors. Vs. Gujarat State Fertilizer Co. Ltd & Anr., (2005) 4 SCC 173.** In the said

case, defence plea was that there was no material to show that the accused at the time of the alleged offence was incharge and/or responsible for the company for the conduct of the business. The High Court did not accept the said plea and held that such controversies were to be adjudicated at the time of trial. The Supreme Court upheld the said view. Thus, from this decision it is clear that these issues have to be adjudicated at the time of trial. Hence, I am not inclined to quash the process.

6. As far as petitioner No.1 is concerned, he still continues to be a Director of the said company. Moreover, he is the signatory to the cheque. In this view of the matter, the process cannot be quashed. No case is made out for interference. The observations made in this order shall not influence the trial Court in any manner while conducting the trial. All the contentions of both parties are left open during the trial.

7. Writ Petitions are disposed of.

(SMT.V.K.TAHILRAMANI,J.)